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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES in their
capacities as Trustees for the NATIONAL
ROOFING INDUSTRY PENSION PLAN; and
ROOFERS & WATERPROOFERS
RESEARCH & EDUCATION TRUST
FUNDS,

Plaintiffs,

v.

WESTECH ROOFING, a California
Corporation,

Defendant.

No.

**COMPLAINT FOR BREACH OF
CONTRACT, DAMAGES AND AUDIT
(ERISA 29 U.S.C. §1001, ET SEQ., 29
U.S.C. §185)**

Plaintiffs complain of Defendant, and for cause of action allege:

JURISDICTION AND INTRADISTRICT ASSIGNMENT

I.

This action arises under and is brought pursuant to Section 502 of the Employee Retirement Income Security Act (ERISA), as amended, 29 U.S.C. §1132, and section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185. Venue properly lies in this district court since Defendant's principal place of business is in Richmond, California. Therefore, intradistrict venue is proper.

PARTIES

II.

At all times material herein, Plaintiff The Board of Trustees are Trustees of the National Roofing Industry Pension Plan and Plaintiff Roofers & Waterproofers Research & Education Fund (hereinafter referred to as “Trust Funds”). At all times material herein, the above-named Trust Funds were, and now are, employee benefit plans created by a written Trust Agreement subject to and pursuant to section 302 of the LMRA (29 U.S.C. § 186), and a multi-employer employee benefit plan within the meaning of sections 3, 4 and 502 of ERISA (29 U.S.C. §§ 1002, 1003 and 1132). The Trust Funds are administered by a Board of Trustees which may bring this action in the name of the Trust Funds pursuant to the express provisions of the Trust Agreements. The Trust Funds and their Board of Trustees shall hereinafter be designated collectively as “Plaintiffs.”

III.

At all times material herein, Defendant WESTECH ROOFING (hereinafter referred to as “Defendant”), has been an employer within the meaning of section 3(5) and section 515 of ERISA (29 U.S.C. §§ 1002(5), 1145) and an employer in an industry affecting commerce within the meaning of section 301 of the LMRA (29 U.S.C. § 185).

ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF

IV.

At all relevant times, Defendant was signatory and bound to a written collective bargaining agreements with Local Union Nos. 40 and 81 of the United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO (hereinafter “Union”), a labor organization within the meaning of section 301 of the Labor Management Relations Act (29 U.S.C. § 185). Defendant became subject to all the terms and conditions of the Collective Bargaining Agreements by virtue of signing a Collective Bargaining Agreement (“CBA”) with each of the aforementioned Local Unions. Each of the CBAs incorporates by reference the Trust Agreement for the National Roofing Industry Pension Plan and the Trust Agreement for the Waterproofers Research & Education Trust Fund. Hereinafter, the respective CBA and Trust Agreements are

collectively referred to as the “Agreements.”

V.

By said Collective Bargaining Agreements, Defendant promised to contribute and pay to Plaintiffs the hourly amounts required by said Agreements for each hour paid for or worked by any of its employees who performed any work covered by the Agreements, and that it would be subject to and bound by all of the terms, provisions, and conditions of the Trust Agreements incorporated by the terms of the respective Collective Bargaining Agreements.

VI.

The Agreements provide for prompt payment of all delinquent contributions to the various Trust Funds, and provide for the payment of interest on all delinquent contributions, liquidated damages as a reasonable attempt to cover the damages incurred by the Trust Funds in the event of a breach by the employer where it would be impracticable or extremely difficult to calculate losses at the time the Agreements were negotiated, attorneys’ fees and other collection costs, and for the audit of the signatory employer or employers’ books and records in order to permit the Plaintiffs to ascertain whether all fringe benefit contributions have been timely paid as required by the applicable labor agreements and law.

FIRST CLAIM FOR RELIEF
(BREACH OF CONTRACT - SETTLEMENT AGREEMENT)

VII.

Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

VIII.

On August 25, 2017, Defendant informed Plaintiffs that it was delinquent in paying the contributions owed to the Trust Funds based upon work performed by its employees under the Local 81 CBA during the time period 2015 through June 2017, and as a result, owed the Trust Funds the sum of \$68,849.03 in principal contributions. On August 25, 2017, Defendant forwarded the sum of \$17,111.93 and agreed to enter into an installment payment arrangement (“Settlement Agreement”). A true and accurate copy of the Settlement Agreement is attached hereto as **Exhibit A**. More specifically, Defendant stated:

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1 We are enclosing a check for \$17,111.93 of the amount due in good
 2 faith and we will be sending a comparable amount every month for
 3 the next three months. We will also remain compliant with the
 directive of the National Roofing Industry Benefit fund. Knowingly
 we will not deviate from that plan.

4 By agreeing to remain compliant with the directive of the National Roofing Industry Benefit
 5 Fund, the Defendant further agreed: that simple interest on the declining balance would accrue at
 6 the rate of 12% per annum; that Defendant would timely remit contributions owed to the Trust
 7 Funds; and that Defendant would pay Plaintiffs' attorneys' fees relating to collection of the
 8 installments owed under the Settlement Agreement and any contributions not timely paid going
 9 forward.

10 IX.

11 After entering the Settlement Agreement and forwarding the check for \$17,111.93,
 12 Defendant made two additional payments, which cleared the bank, in the amounts of \$16,628.72
 13 and \$14,585.02. The Defendant also made a third payment in the amount of \$15,523.36;
 14 however, such payment did not clear the bank. Rather, the check for that payment was returned
 15 by the bank "NSF." The Defendant informed the Plaintiffs that a replacement check would be
 16 forwarded for the check that failed to clear the bank. However, to date, no replacement check has
 17 been forwarded. Additionally, although the Defendant agreed to timely report and pay
 18 contributions going forward, the Defendant remitted contributions for work performed during the
 19 months of July through November 2017, late.

20 X.

21 Defendant's failure to make the payment owed under the Settlement Agreement was a
 22 default under the Settlement Agreement and failure to pay contributions timely was also a default.
 23 There is now due and owing and unpaid to Plaintiffs contributions in the amount of \$15,523.36,
 24 liquidated damages and interest on the aforementioned contributions owed under the Settlement
 25 Agreement in the amounts estimated to be at least \$18,456.48, and attorneys' fees relating to the
 26 aforementioned contributions owed under the Settlement Agreement in the amount of at least
 27 \$5,825.00. Additionally, as a result of the untimely payments made by Defendant for
 28 contributions owed for work performed during the months of July through November of 2017, the

1 Defendant also owes liquidated damages and interest in the amount of at least \$1,559.81 and
2 attorneys' fees in the amount estimated to be at least \$550. 00.

3 XI.

4 Plaintiffs, through their attorney, attempted to collect the sums owing without resorting to
5 the Court for enforcement, by writing Defendant regarding the breach of the Settlement
6 Agreement; however, Defendant failed and refused and continues to fail and refuse to pay the
7 sums owing pursuant to the Settlement Agreement.

8 XII.

9 Plaintiffs complied with all conditions on their part to be performed under the terms of the
10 Settlement Agreement.

11 XIII.

12 Pursuant to the terms of the Trust Agreement, Plaintiffs are entitled to all reasonable
13 attorneys' fees, court costs, and other reasonable expenses incurred in connection with this matter
14 due to Defendant's failure and refusal to fully comply with the Settlement Agreement by paying
15 the contributions owed.

16 **SECOND CLAIM FOR RELIEF**
17 **(BREACH OF CONTRACT)**

18 XIV.

19 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

20 XV.

21 Defendant has failed, neglected, or refused to make timely fringe benefit contributions as
22 required by the Local 81 Collective Bargaining Agreement and Trust Agreement, and there is
23 now due and owing and unpaid to the Trust Funds, contributions in the amount of \$15,523.36 for
24 the period of June 2016 through November 2016, liquidated damages and interest on the
25 aforementioned unpaid contributions in the amount estimated to be at least \$18,456.48, liquidated
26 damages and interest on contributions paid, but paid late, during the period July 2017 through
27 November 2017 in the amount estimated to be at least \$1,559.81; and attorneys' fees related to
28 the collection of the aforementioned amounts estimated to be at least \$6,375.00.

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1 XVI.

2 Plaintiffs are the intended third-party beneficiaries of the Agreements, but Trust Fund
3 contribution delinquencies are excluded from the arbitration provisions of the Agreements.

4 XVII.

5 Plaintiffs complied with all conditions on their part to be performed under the terms of the
6 applicable Agreements.

7 XVIII.

8 Plaintiffs are entitled to reasonable attorneys' fees, interest, and other all reasonable
9 expenses incurred in connection with this matter due to Defendant's failure and refusal to pay all
10 fringe benefit contributions due and owing pursuant to the terms of the applicable Master
11 Agreement, Trust Agreements, and ERISA section 502(g)(2) (29 U.S.C. § 1132(g)(2)).

12 **THIRD CLAIM FOR RELIEF**
13 **(ACTUAL DAMAGES FOR BREACH OF CONTRACT)**

14 XIX.

15 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

16 XX.

17 Defendant has failed, neglected and refused to make timely fringe benefit contributions as
18 required by the applicable Collective Bargaining Agreements and Trust Agreement, and has
19 caused Plaintiffs actual damages in an amount to be proven at trial.

20 **FOURTH CLAIM FOR RELIEF**
21 **(AUDIT)**

22 XXI.

23 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

24 XXII.

25 Plaintiffs believe that additional amounts may be due and owing and also pray for an audit
26 to determine same, covering the time period beginning January 1, 2014 through the current date.
27 Plaintiffs demanded that Defendant submit to such audit as required by the Agreements on
28 August 23, 2017. However, to date, Defendant has failed and/or refused to submit to the audit. A
true and accurate copy of the aforementioned audit demand letter is attached hereto as **Exhibit B**.

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1 **WHEREFORE**, Plaintiffs pray for judgment against Defendant as follows:

2 1. That Defendant be ordered to pay \$15,523.36 for contributions; liquidated
3 damages and interest on unpaid contributions in the amounts estimated to be at least \$18,456.48;
4 and attorneys' fees related to its default under the settlement agreement in the amount of at least
5 \$5,825.00;

6 2. That Defendant be ordered to pay liquidated damages and interest in the amounts
7 estimated to be at least \$1,559.81 related to its untimely payment of contributions owed based
8 upon work performed during the time period July 2017 to November 2017; and attorneys' fees
9 related to such untimely payments in the amount of at least \$550.00.

10 3. That Defendant be ordered to pay actual damages according to proof;

11 4. That this Court issue an Order directing and permanently enjoining Defendant to
12 timely submit to Plaintiffs all reports and contributions due and owing by Defendant plus interest,
13 liquidated damages, attorneys' fees, and costs as provided in ERISA sections 502(a)(3) and (g)(2)
14 (29 U.S.C. § 1132(a)(3), (g)(2));

15 5. That this Court issue an Order permanently enjoining Defendant, for so long as it
16 remains obligated to contribute to the Trust Funds, from failing, neglecting, or refusing to timely
17 submit required monthly contributions reports and payments as required by the terms of the
18 collective bargaining agreements, Trust Agreements and ERISA sections 502(a)(3) and (g)(2) (29
19 U.S.C. § 1132(a)(3), (g)(2));

20 6. That Defendant be ordered to pay Plaintiffs' attorneys' fees according to proof;

21 7. That Defendant be ordered to submit to an audit between Plaintiffs and Defendant
22 covering the time period beginning January 1, 2014 to date;

23 8. That Defendant be ordered to pay costs of suit herein;

24 9. That this Court grant such further relief as this Court deems just and proper and;

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